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ELECTRONICALLY FILED
DOC #:
DATE FILED: 9-11-24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. :

LUIS BALBUENA, :

Defendant. :

ORDER

18 CR 279 (VB)

Copies Mailed/Faxed 9-11-24 DH
Chambers of Vincent L. Braccetti

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By motion filed September 9, 2024, defendant Luis Balbuena seeks a reduction of his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 to the U.S. Sentencing Guidelines. Amendment 821 went into effect on November 1, 2023, and applies retroactively.

On February 7, 2019, the Court sentenced Balbuena to 120 months' imprisonment, which is the statutory mandatory minimum sentence for the offense to which he pleaded guilty—conspiracy to distribute and possess with intent to distribute approximately 2.1 kilograms of heroin, 100 grams of fentanyl, and one kilogram of cocaine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). Amendment 821 does not authorize the Court to reduce a defendant's term of imprisonment to below the mandatory minimum. See *United States v. Jones*, 2024 WL 2305260 (S.D.N.Y. May 21, 2024); U.S.S.G. § 1B1.10(a)(2)(B) and Application Note 1(A). Thus, Balbuena is not eligible for a reduction of his term of imprisonment pursuant to Amendment 821.

Moreover, Balbuena has 8 criminal history points, and did not commit the instant offense while under a criminal justice sentence. Thus, neither the “zero-point offenders” nor the “status points” provisions of Amendment 821 apply here. See U.S.S.G. §§ 4A1.1(e), 4C1.

Accordingly, Balbuena's motion for a reduction of his term of imprisonment is DENIED.

Balbuena also requests that the Court appoint counsel to investigate the possible application of Amendment 821 to his case. But because Balbuena is not eligible for a reduction of his term of imprisonment under Amendment 821, no purpose would be served by appointing counsel to assist him in making a motion for such relief. Accordingly, the request for appointment of counsel is DENIED.

Chambers will mail a copy of this Order to defendant at the following address:

Luis Balbuena, Reg. No. 63062-054
FCI Fort Dix
Federal Correctional Institution
P.O. Box 2000
Joint Base MDL, NJ 08640

Dated: September 11, 2024
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge